

WHAT AM I ENTITLED TO IN A DIVORCE IN AUSTRALIA?

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Not surprisingly, one of the most common questions we get is what will someone's entitlement in a property settlement be? The answer is: it will differ for everyone – but here is what you should consider.

The property settlement process is complicated, but essentially it involves the identification and valuation of the relationship property (which is broadly defined) and then a determination of the appropriate "percentage division" between the couple.

The percentages are determined by considering the contributions that have been made by each spouse.

Working out a property settlement is unfortunately an 'inexact science', but it broadly involves four basic steps:

Stage 1: Identify and Value Assets

- All the parties' property is included in the property pool. This can include houses, units, superannuation, businesses, bank accounts, furniture, motor vehicles, etc.
- A value must be given to all assets. The court does not automatically sell everything.

Stage 2: Consideration of the contributions

The court will consider contributions made by each spouse, including:

- Initial contributions.
- Financial contributions, including any inheritances, gifts and lump sum payments received.
- Non-financial contributions.
- Contributions made to the welfare of the family.

Stage 3: Future Needs

- The court will also consider any adjustments that should be made for the future needs of the wife or husband (this may be the case where there is an income or earning disparity between the parties or one cannot obtain employment due to an illness).

Stage 4: Reaching an Agreement

- Any agreement must then be considered as to whether it is 'just and equitable'.
- If the wife and husband can agree on a financial settlement a solicitor can draft a Consent Order or a Binding Financial Agreement on their behalf.

Be Aware of Your Time Limits

A property settlement can be done at any time after separation. However, for married couples, time to make an Application to the Court runs out 12 months after a Divorce order is made.

If an Application to the Court for a de facto property settlement is to be made, it must be filed in Court within 2 years after the date the de facto couple separated.

Document Your Agreement

Where parties can reach an agreement in relation to property settlement, there are 2 possible ways of documenting the agreement to ensure it is enforceable:

- By incorporating the agreement in orders which are made by the Family Court with the consent of both parties (Consent Orders); or
- By incorporating the agreement in a Financial Agreement, which deals with property settlement and which does not require the approval of the Court to be binding on both parties.

If an agreement cannot be reached, the parties can commence court proceedings by making an application for Final Orders.



Beware the Myths

As you have probably worked out from reading this article, there is no such thing as a 50%/50% split rule in Australia for property settlement. Every country is different.

Also, be aware that you do not have to go to court, the vast majority of separated couples resolve property division by agreement with no court involvement.

To ensure you get what you deserve, we recommend that you seek professional legal advice on property settlement matters. Speak with one of our experienced family lawyers at your initial fixed-price consultation. Call us on (07) 3221 4300, or complete online form [here](#) to book your appointment.